

PRIVATIZED EMPLOYERS AND NONPROFIT CORPORATIONS

A.C.A. § 24-7-202(13)(E) and (F)

Act 1064 of 1997, as amended by Act 146 of 2005, allows the employees of certain privatized employers performing services for public school districts and certain educational nonprofit corporations to become members of the Arkansas Teacher Retirement System.

DEFINITIONS

1. **ATRS** means the Arkansas Teacher Retirement System.
2. **Organization** means (i) any private entity providing services for a public school district and whose employees were formerly employed by the school district and had been members of ATRS, and (ii) any educational nonprofit corporation licensed and regulated by the Division of Developmental Disabilities Services of the Department of Human Services.
3. **Employees** means any persons employed by an organization.

RULES

1. Effective July 1, 1997, under certain conditions, membership in the Teacher Retirement System shall include employment in an enterprise privatized by a public school district. If a public school district should privatize any of its services, any individual who is or was employed by the school district in one of those services and who is or has been a member of ATRS may elect to remain a member, provided the Board of Trustees determines by adopting rules and regulations that participation of these employees in the System will not in any way impair any legal status of the System, including, but not limited to, its status as a governmental plan, pursuant to the federal Internal Revenue Code and ERISA, or its tax-qualified status under the Internal Revenue Code; will not subject the plan to additional federal requirements and will not have a substantial adverse impact on the actuarial soundness of the System. In addition, the private provider must assume all responsibility for the required employer contributions and any fees for obtaining IRS rulings or ERISA opinions. [Act 1064 of 1997, A.C.A. § 24-7-202(13)(E)]
2. Effective July 1, 1997, under certain conditions, membership in the Teacher Retirement System shall include employment in positions with educational nonprofit corporations licensed and regulated by the Division of Developmental Disabilities Services of the Department of Human Services, provided

the nonprofit corporation has elected to participate in the Arkansas Teacher Retirement System, and the Board of Trustees determines by adopting rules and regulations that participation of these employees in the System will not in any way impair any legal status of the System, including, but not limited to, its status as a governmental plan, pursuant to the Internal Revenue Code and the Employee Retirement Income Security Act of 1974, or its tax-qualified status under the Internal Revenue Code; will not subject the plan to additional federal requirements; and will not have a substantial adverse impact on the actuarial soundness of the System. Such employment shall be related to the training of public school employees or school board members, teaching public school students, or in adult education programs. The employment shall not be related in any manner to private schools. Each educational nonprofit corporation shall be approved according to rules and regulations established by the Board of Trustees to be considered an employer, and such nonprofit corporation assumes all responsibility for the required employer contributions and any fees for obtaining IRS rulings or ERISA opinions. [Act 1064 of 1997; Act 146 of 2005; A.C.A. § 24-7-202(13)(F)]

3. **Application for Membership.** Any organization that desires its employees to become members of ATRS shall make written application to the Executive Director of ATRS, specifying the proposed effective date for such participation.
4. **Information Provided to ATRS.** Each application for membership shall contain the following information and materials:
 - A. A certified copy of the Articles of Incorporation, Bylaws, and other organizational documents of the organization;
 - B. A copy of the most recent three (3) years' annual financial statements, including balance sheet, financial statements, and statement of cash flows, or if such organization does not have audited financial statements, the year-end compilation reports or internal balance sheet and income statements for the organization;
 - C. A copy of the most recent three (3) years' federal and state income tax returns;
 - D. A description of the sources of funding of the organization, including the percentage of such funds provided by federal or state government and the type of such government funds;
 - E. A description of how the board of directors or board of trustees is selected, and whether any governmental agency has input in the selection of board members;

- F. A description of the types of persons served by the organization, and which government agency or agencies would be responsible for providing such services if the organization did not do so.
- 5. **Tax Ruling.** After counsel for ATRS has reviewed the information provided pursuant to No. 4 above, such counsel shall determine whether a ruling should be requested from the Internal Revenue Service that the participation of the employees of the organization will not jeopardize the status of ATRS as a "governmental plan." If counsel determines that such a ruling should be requested, the organization shall provide any additional information and statements requested by counsel in connection with such ruling request.
- 6. **Fees.** If counsel for ATRS determines that a ruling should be requested, the organization shall pay to ATRS not less than the sum of \$3,000.00 or the actual cost for the fees and costs associated with such ruling request.

Adopted: August 11, 1998
Amended: July 18, 2005